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INTERNATIONAL LONGSHORE AND WAREHOUSE UNION

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Attorneys for Defendant
INTERNATIONAL LONGSHORE AND WAREHOUSE UNION
Local 29

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ABRAM RODRIGUEZ,	)	Case No. 08-CV-0433-H-BLM
)	
Plaintiff,	)	DEFENDANTS INTERNATIONAL
	)	LONGSHORE AND WAREHOUSE
v.	)	UNION LOCAL 29 AND
	)	INTERNATIONAL LONGSHORE AND
INTERNATIONAL LONGSHORE AND	)	WAREHOUSE UNION'S NOTICE OF
WAREHOUSE UNION LOCAL 29;	)	RELATED CASES UNDER CIVIL
INTERNATIONAL LONGSHORE AND	)	RULE 40.1(c) AND MOTION TO
WAREHOUSE UNION,	)	TRANSFER UNDER 29 U.S.C. §504
)	
Defendants.	)	Complaint filed: March 7, 2008
)	

TO THE CLERK OF THE ABOVE ENTITLED COURT AND PLAINTIFF AND HIS
ATTORNEY OF RECORD:

1 PLEASE TAKE NOTICE that pursuant to Southern District Civil Rule 40.1(e)-(f),
2
3 Defendants International Longshore and Warehouse Union ("ILWU") and Local 29, ILWU,
4 hereby submit that the instant action, *Rodriguez v. ILWU Local 29, et. al.*, Case No. 08 CV
5 0433 H BLM, filed March 6, 2008, is related to a previously filed action in this district *United*
6 *States of America v. Rodriguez*, Case No. 3:94-cr-00099-T, filed January 27, 1994. The
7 defendants also request that this Court transfer the instant case to Judge Howard B. Turrentine,
8 pursuant to the specifications of the Labor Management Reporting and Disclosure Act
9 (LMRDA), 29 U.S.C. §504(a), which requires that the initial sentencing judge in a criminal
10 case make the determination whether the sentenced person is disqualified to hold union office
11 during the thirteen year prohibition under that provision. The notice and motion are based on
12 the points and authorities below, the criminal docket sheet for Case No. 3:94-cr-00099-T
13 (attached hereto as exhibit "A", which was obtained from the court's official website, through
14 Pacer, and of which the court may take judicial notice), and the court's files in both matters.

15 *Notice of Related Cases*

16
17 The instant case and *U.S. v. Rodriguez* "involve some of the same parties and are based
18 on the same or similar claims" and present the "same questions of law." L.R. Civ. 40.1(f). *U.S.*
19 *v. Rodriguez*, concerned the conviction of the Plaintiff in the instant civil matter of the federal
20 crime of conspiracy to defraud the United States, a violation of 18 U.S.C. §§371 and 1546, by
21 giving false statements on a visa application. (See, Exhibit "A", attached hereto.) In *Rodriguez*
22 *v. ILWU*, a dispositive issue is whether or not Mr. Rodriguez's conviction precludes him from
23 holding union office under the LMRDA §504(a). If Mr. Rodriguez's conviction were found to
24 make him ineligible to hold union office under federal law, this finding would effectively
25 negate his challenge of his removal from union office in the pending civil case.
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1 Under LMRDA § 504(a), no person who has been convicted of robbery, extortion,
2 embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault
3 with intent to kill, assault which inflicts grievous bodily injury or violations of Title II or Title
4 III of the Act, shall be permitted to serve as an officer of a labor organization during the period
5 of thirteen years after such conviction or after the end of such imprisonment, whichever is later.
6 Although conspiracy to defraud the United States is not specifically listed, “[a]ll of the reported
7 cases have read § 504 in a broad fashion so as to include crimes not specifically enumerated.”
8 *Lippi v. Thomas*, 298 F.Supp 242, 247 (D.C.Pa. 1969) and cases cited therein.
9

10 Plaintiff’s complaint, challenging his recall from union office, turns on his ability to
11 hold office in the first place, which is necessarily related to his conviction in *U.S. v. Rodriguez*.
12 If plaintiff Rodriguez’s crime falls within §504, then he would not be eligible to serve in union
13 office until at least March 11, 2008, which is thirteen years after his release from parole on or
14 about March 11, 1995, according to the criminal docket sheet. (See, Exhibit “A”.) Plaintiff
15 began his term in office on July 1, 2007, a date clearly within the thirteen year bar.
16

17 *Motion to Transfer*

18 Under section 504 of the LMRDA, an individual convicted of a federal crime, such as
19 Plaintiff here, may hold union office during the thirteen year ban only where “the sentencing
20 judge” determines, upon a motion of the person convicted, that a lesser period of
21 disqualification from union office “would not be contrary to the purposes of the Act.” LMRDA
22 §504(a); see *Postma v. Int’l Brotherhood of Teamsters, Chauffeurs, Warehousemen and*
23 *Helpers of America, Local 294*, 229 F.Supp. 655 (N.D.N.Y 1964). The last part of Section
24 504(a) sets forth the following instructions for the sentencing judge:
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Prior to making any such determination, the court shall hold an hearing and shall give notice of such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The court's determination in any such proceeding shall be final. No person shall knowingly hire, retain, and employ, or otherwise place any other person to serve in any capacity in violation of this subsection.

(29 U.S.C. § 504)

Plaintiff's civil action for unlawful removal from union office rests on the central question whether he was legally qualified under section 504. While the parties here disagree on the matter, clearly section 504 requires that this issue be determined by Plaintiff's sentencing judge, upon a hearing with notice to the Department of Labor and the U.S. Attorney's Office for the Southern District of California.

Relating the two cases in question and transferring the civil action to Judge Turrentine is required by section 504, necessary for the resolution of this case, and will enhance judicial economy by avoiding duplicative proceedings in two courts in accordance with Civil Rule 40.1(e).

DATED July 21, 2008

Respectfully Submitted,
HOLGUIN, GARFIELD & MARTINEZ

By: /s/
JOHN KIM
Attorneys for Defendant
INTERNATIONAL LONGSHORE
AND WAREHOUSE UNION LOCAL 29

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DATED: July 21, 2008

LEONARD CARDER, LLP

By: /s/
ROBERT S. REMAR
Attorneys for Defendant
INTERNATIONAL LONGSHORE
AND WAREHOUSE UNION

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EXHIBIT A

SEALDC, TERMED

**U.S. District Court
Southern District of California (San Diego)
CRIMINAL DOCKET FOR CASE #: 3:94-cr-00099-T-1**

Case title: USA v. Rodriguez

Date Filed: 01/27/1994

Date Terminated: 06/27/1994

Assigned to: Judge Howard B.
Turrentine

Defendant (1)

Abram F Rodriguez

TERMINATED: 06/27/1994

represented by **Ricardo M Gonzalez**

Law Offices Ricardo M Gonzalez

101 West Broadway

Suite 1950

San Diego, CA 92101-6036

(619)238-9910

Fax: (619)238-9914

Email: ricardo@attorneygonzalez.com

TERMINATED: 06/27/1994

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Designation: Retained

Pending Counts

18:371 and 18:1546 - Conspiracy to
make false statement in visa
applications.

(1)

Disposition

Committed to the custody of the Bureau of Prisons for imprisonment for a period of 8 months, four months shall be in MCC and the other four months shall be in a Community Confinement Center under the direction of the Bureau of Prisons; 1 yr supervised release with conditions; dft shall selft surrender on or before 7/11/94 at 12:00 noon at the MCC; Assessment \$50.00; Modified Sentencing held 11/1/94; court modified judgment and commitment to the custody of the Bureau of Prisons for imprisonment for a period of 4 months; Supervised released for 1 yr, with 4 months at a Community Confinement Center under the direction of the

Probation Department, following confinement at the Metropolitan Community Correctional Center; all other terms and conditions to remain the same.

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Plaintiff

United States of America

represented by **U S Attorney CR**

U S Attorneys Office Southern District
of California
Criminal Division
880 Front Street
Room 6293
San Diego, CA 92101
(619)557-5610
Fax: (619)557-5917
Email: Efile.dkt.gc2@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/27/1994	1	Waiver of Indictment for dft Abram F Rodriguez (sjh) (Entered: 02/02/1994)
01/27/1994	2	INFORMATION by USA . Abram F Rodriguez (1) count(s) 1 (sjh) (Entered: 02/02/1994)
01/27/1994		DEFENDANT Abram F Rodriguez arrested (sjh) (Entered: 02/02/1994)
01/27/1994	3	Minutes: Enter Order by Judge Anthony J. Battaglia first appearance of Abram F Rodriguez on 1/27/94, and Attorney Ricardo Gonzalez present; \$20,000 P/S set, cosign by dft and conditions filed ; dft arraigned and plea not guilty plea; in-court hearing re motion/trial setting set for 1/31/94 at 9:00 am for Abram F Rodriguez (sjh) (Entered: 02/02/1994)

01/27/1994	4	ORDER by Judge Anthony J. Battaglia setting conditions of release for Abram F Rodriguez: restrict travel to United States; not possess any firearm or other dangerous weapon; not possess or use any narcotic drug or other controlled substance, as defined in 21:802, w/out a lawful medical prescription; execute a personal appearance bond in the amt of \$20,000 secured by: cosigned of dft; return on 1/31/94 at 9:00 am before Judge Turrentine (sjh) (Entered: 02/02/1994)
01/27/1994	5	BOND (20,000 P/S, Posted on 1/27/94 before Magistrate Judge Battaglia) for Abram F Rodriguez, t/w afdt by owner of cash security, advice of penalties and sanctions. Issued Abstract to USM. (sjh) (Entered: 02/02/1994)
01/31/1994	7	Minutes: Enter Order by Judge Howard B. Turrentine Dft plea guilty to ct 1 ; court order Pre-Sentence Investigation and sentencing hearing set for 9:00 am on 4/18/94 for Abram F Rodriguez . Court Reporter: Donna Larsen (sjh) (Entered: 02/04/1994)
04/18/1994	8	Minutes: Enter Order by Judge Howard B. Turrentine Request to continue sentencing - granted; sentencing hearing continued to 5/16/94 at 9:00 am for Abram F Rodriguez . Court Reporter: Donna Larsen (sjh) (Entered: 04/20/1994)
04/28/1994	9	Objections by dft Abram F Rodriguez to Pre-Sentence Report. (sjh) (Entered: 05/02/1994)
05/11/1994	10	Govt's Sentencing Memorandum including recommendation for downward departure and Govt's response to dft's objections to Presentence Report re defendant Abram F Rodriguez. (sjh) (Entered: 05/17/1994)
05/12/1994	11	Minutes: Enter Order by Judge Irma E. Gonzalez Pre-Motion settlement conf held 5/12/94, case not settled and referred back to Judge Turrentine . (sjh) (Entered: 05/17/1994)
05/16/1994	12	Minutes: Enter Order by Judge Howard B. Turrentine sentencing hearing continued to 6/27/94 at 9:00 am for Abram F Rodriguez . Court Reporter: Donna Larsen (sjh) (Entered: 05/19/1994)
06/22/1994	13	Sentencing memorandum re dft Abram F Rodriguez (sjh) (Entered: 06/30/1994)
06/27/1994	14	Minutes: Enter Order by Judge Howard B. Turrentine Sentencing hrg held ; sentencing Abram F Rodriguez (1) count(s) 1. Committed to the custody of the Bureau of Prisons for imprisonment for a period of 8 months, four months shall be in MCC and the other four months shall be in a Community Confinement Center under the direction of the Bureau of Prisons; 1 yr supervised release with conditions; dft shall self surrender on or before 7/11/94 at 12:00 noon at the MCC; Assessment \$50.00; Terminating dft Abram F Rodriguez ; case terminated Court Reporter: Donna Larsen (sjh) (Entered: 06/30/1994)
06/28/1994	15	Judgment and Commitment issued to U.S. Marshal for Abram F Rodriguez by Judge Howard B. Turrentine (sjh) (Entered: 06/30/1994)
07/18/1994	16	Minutes: Enter Order by Judge Howard B. Turrentine bond exonerated on 7/11/94 by order of ocourt as to dft Abram F Rodriguez . Court Reporter: Donna

		Larsen (sjh) (Entered: 07/22/1994)
11/01/1994	17	Stipulation and order by Judge Howard B. Turrentine: IT IS HEREBY ORDERED the Judgment of Sentence entered in the above-entitled matter shall be amended to reflect a commitment to four motnhs actual custody and fourth months at a Community Confiement Center. (sjh) (Entered: 11/01/1994)
11/01/1994	18	Minutes: Enter Order by Judge Howard B. Turrentine sentencing Abram F Rodriguez (1) count(s) 1. Committed to the custody of the Bureau of Prisons for imprisonment for a period of 8 months, four months shall be in MCC and the other four months shall be in a Community Confinement Center under the direction of the Bureau of Prisons; 1 yr supervised release with conditions; dft shall self surrender on or before 7/11/94 at 12:00 noon at the MCC; Assessment \$50.00; Modified Sentencing held 11/1/94: court modified judgment and commitment to the custody of the Bureau of Prisons for imprisonment for a period of 4 months; Supervised released for 1 yr, with 4 months at a Community Confinement Center under the direction of the Probation Department, following confinement at the Metropolitan Community Correctional Center; all other terms and conditions to remain the same. ; Terminating defendant Abram F Rodriguez ; NUNC PRO TUNC 6/27/94 (sjh) (Entered: 11/01/1994)
11/01/1994	19	Modified Judgment and Commitment issued to U.S. Marshal for Abram F Rodriguez by Judge Howard B. Turrentine. (sjh) (Entered: 11/01/1994)

PACER Service Center			
Transaction Receipt			
07/18/2008 15:03:05			
PACER Login:	lc0126	Client Code:	320149
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Billable Pages:	3	Cost:	0.24

CERTIFICATE OF SERVICE

The undersigned declares, under penalty of perjury, that the foregoing is true and correct. Declarant is employed in the City and County of San Francisco, California. Declarant is over the age of eighteen and is not a party to this action. Declarant's business address is 1188 Franklin Street, Ste 201, San Francisco, California. On July 21, 2008, declarant served the within **ILWU AND ILWU LOCAL 29'S NOTICE OF RELATED CASES UNDER CIVIL RULE 40.1(c) AND MOTION TO TRANSFER UNDER 29 U.S.C. SECTION 504** on the undersigned by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in a United States Post Office mail box in San Francisco, addressed as follows:

DEREK T. ANDERSON, ESQ.
1850 FIFTH AVENUE
SAN DIEGO, CA 92101

Executed this 21st day of July, 2008 at San Francisco, California.



Mathilda Mendonca